

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**FILED**

AUG 10 2004

LAWRENCE E. JAFFE PENSION PLAN,  
on Behalf of Itself and All Others Similarly  
Situating,

Plaintiff,

v.

HOUSEHOLD INTERNATIONAL, INC., et al.

Defendants.

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Lead Case No. 02-C-5893  
(Consolidated)

Judge Ronald A. Guzman  
Magistrate Judge Nan R. Nolan

**DOCKETED**

AUG 18 2004

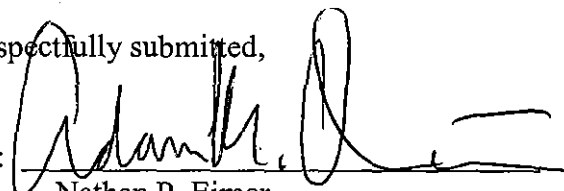
**NOTICE OF MOTION**

*August 17 @ 9:00 am*

PLEASE TAKE NOTICE that, on ~~August 12~~ *August 17*, 2004 at 9:00 a.m., we shall appear before Magistrate Judge Nan R. Nolan in Room 1858 of the Dirksen Federal Building, 219 S. Dearborn, Chicago, Illinois, and shall then and there present Defendants' Motion to Compel Lead Plaintiffs to Comply with their Initial Disclosure Obligations Under Federal Rule of Civil Procedure 26(a)(1), a copy of which is attached hereto.

Respectfully submitted,

By:



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Gilmer, and J.A. Vozar

CLERK  
U.S. DISTRICT COURT

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT ILLINOIS  
EASTERN DIVISION

FILED

AUG 10 2004

MICHAEL M. DOBBINS  
CLERK U.S. DISTRICT COURT

LAWRENCE E. JAFFE PENSION PLAN,  
on Behalf of Itself and All Others Similarly  
Situated,

Lead Case No. 02-3893  
(Consolidated)

Plaintiff,

Judge Ronald A. Guzman  
Magistrate Judge Nan R. Nolan

v.

HOUSEHOLD INTERNATIONAL, INC., *et al.*,

Defendants.

DOCKETED

AUG 18 2004

**MOTION TO COMPEL LEAD PLAINTIFFS TO COMPLY  
WITH THEIR INITIAL DISCLOSURE OBLIGATIONS  
UNDER FEDERAL RULE OF CIVIL PROCEDURE 26(a)(1)**

Defendants Household International, Inc., Household Finance Corporation,  
William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar (collectively, the  
“Household Defendants”) and defendant Arthur Andersen LLP (“Andersen”) respectfully move  
this Court for an order compelling Lead Plaintiffs to fulfill their initial disclosure obligations  
under Federal Rule of Civil Procedure 26(a)(1). Specifically, the Household Defendants and  
Andersen request that the Court require Lead Plaintiffs promptly to supplement their initial  
disclosures to provide a computation of their alleged damages. In support of their motion, the  
defendants state as follows:

1. Lead Plaintiffs served their Initial Disclosures Pursuant To Federal Rule  
Of Civil Procedure 26(a)(1) (“Lead Plaintiffs’ Disclosures”) on June 25, 2004.<sup>1</sup> Lead Plaintiffs’

<sup>1</sup> See Exh. A.

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U.S. DISTRICT COURT

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Disclosures failed to provide all the information required by Rule 26(a)(1)(A) concerning non-parties who are likely to have discoverable information and provided none of the information required by Rule 26(a)(1)(C) concerning a computation of their alleged damages.

2. Fed. R. Civ. P. 26(a)(1)(C) mandates disclosure of “a computation of any category of damages claimed,” as well as the evidence on which the computation is based, “including materials bearing on the nature and extent of injuries suffered[.]” Lead Plaintiffs’ Disclosures contain no computation of damages and no supporting evidence, ostensibly because Lead Plaintiffs “have not yet determined the full amount of compensatory damages sustained.”<sup>2</sup>

3. By letter dated July 2, the Household Defendants asked Lead Plaintiffs to supplement their disclosures as required by Federal Rule 26(a)(1) concerning non-party witnesses and damages.<sup>3</sup> Lead Plaintiffs did not reply to that letter. By e-mail sent on a subsequent date, Andersen joined in Household’s written objections to Lead Plaintiffs’ Rule 26(a)(1) disclosures.

4. On July 14, 2004, during a telephonic “meet and confer,” the Household Defendants again asked Lead Plaintiffs to correct the deficiencies in Lead Plaintiffs’ Disclosures. Lead Plaintiffs said they would “consider” providing limited additional information concerning potential non-party witnesses but would provide no computation of damages or supporting evidence.<sup>4</sup>

5. By letter dated July 23, Lead Plaintiffs agreed to provide some, but not all, of the information mandated by Rule 26(a)(1)(A) concerning non-party witnesses, but refused to

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<sup>2</sup> See Exh. A at 11.

<sup>3</sup> See Exh. B.

<sup>4</sup> See Exh. C.

provide the damages computation and supporting evidence required by Rule 26(a)(1)(C).<sup>5</sup>

6. In their July 23 letter, Lead Plaintiffs argue that disclosing their damages computations would be “premature at this stage.”<sup>6</sup> Yet Rule 26 precludes this excuse: “A party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case.”<sup>7</sup>

7. Federal courts in Illinois and elsewhere have excluded evidence supporting particular damages theories, and have dismissed claims outright, based on claimants’ failures to disclose the information required by Rule 26(a)(1)(C).<sup>8</sup> These cases underscore Lead Plaintiffs’ obligation to explain their alleged damages now and to supplement their disclosures, as may be necessary, throughout the discovery process. Either Lead Plaintiffs had evidence of damages when they filed their complaints against the Household Defendants or they did not.<sup>9</sup> If

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<sup>5</sup> See Exh. D.

<sup>6</sup> See Exh. D.

<sup>7</sup> See Fed. R. Civ. P. 26(a)(1)(E).

<sup>8</sup> See *Bullard v. Roadway Express*, 3 Fed. Appx. 418, 420, No. 99-6497, 2001 WL 133128, at \*2 (6th Cir. Feb. 5, 2001) (affirming dismissal for failure to disclose damages computation); *Chedick v. Nash*, 151 F.3d 1077, 1084 (D.C. Cir. 1998) (affirming preclusion of damages evidence not disclosed pursuant to Rule 26(a)(1)(C)); *Advanced Cleanroom Techs. v. Newhouse*, No. 00 C 6623, 2002 WL 206960, at \*5 (N.D. Ill. Feb. 11, 2002) (excluding evidence relating to categories of damages where computations and supporting documents were not disclosed); *Gilvin v. Fire*, No. 99-CV-530, 2002 WL 32170943 (D.D.C. Aug. 16, 2002) (same); *American Realty Trust, Inc. v. Matisse Partners, LLC*, No. Civ.A.3:00-CV-1801-G, 2002 WL 1489543 (N.D. Tex. July 10, 2002) (same); *Colombini v. Members of the Bd. of Empire Coll. Sch. of Law*, No. C9704500CRB, 2001 WL 1006785, at \*8 (N.D. Cal. Aug. 17, 2001), *aff’d*, 61 Fed. Appx. 387, 2003 WL 1827225 (9<sup>th</sup> Cir. Apr. 7, 2003); *Reytblatt v. Illinois Inst. of Tech.*, No. 97 CV 927, 1999 WL 181995, at \*2 (N.D. Ill. Mar. 24, 1999) (dismissing complaint for failure to disclose information required by Rule 26(a)(1), including damages computation and supporting documents). All unreported cases cited herein are attached as Exhibit E.

<sup>9</sup> For example, each Lead Plaintiff appointed by the Court pursuant to the Private Securities Litigation Reform Act of 1995 is an institutional investor that claims to manage very large investment funds for its clients. See, e.g., Plaintiffs’ Memorandum Of Law In Support Of Motion For Class Certification at 6 (identifying Glickenhau & Co. as “an SEC-registered investment advisor with hundreds of millions of dollars of assets under management”); *id.* at 7 (describing

they did not, they should say so now.

WHEREFORE, for all the foregoing reasons, this Court should issue an order compelling Lead Plaintiffs to supplement Lead Plaintiffs' Disclosures by August 27, 2004, to state the amount of their claimed damages; provide the computation on which their damages claim is based; and produce all evidence on which their damages computation is based, including all materials bearing on the nature and extent of their alleged injuries, all as required by Federal Rule of Civil Procedure 26(a)(1)(C).

Dated: August 10, 2004  
Chicago, Illinois

Respectfully submitted,

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By: 

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-and-

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PACE Industry Union Management Pension Fund and the International Union of Operating Engineers Local No. 132 Pension Plan). Surely such investment managers keep track of — and report to their investors — the performance of their investments, including any losses that may be sustained, and may even be required to explain why they believe losses occurred. Rule 26 requires disclosure of this (or any similar information) now.

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**SEE CASE  
FILE FOR  
EXHIBITS**